

Intercepted Interrogation between FBI Agent (J.C.) and Target/Defendant (A.P.)
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
0:01	Defendant	"Ok"
0:03	Defendant	"how many" – Directed to Defendants Family (Spouse waiting in vehicle)
0:04	Defendant's Spouse	Spouse mumbles confirmation of quantity of pizzas ordered by defendant
0:07	Defendant	"Ok Go"
0:09	Defendant	"no I'm not smoking" – Directed to spouse who is waiting in the car
0:13	Fed. Agent	"here's what I want to say, in the next 6 months, ????,...."
0:21	Fed. Agent	"ok, you are either going to take the whole fail, for all the SHIT that happened, ok, that means????? Out of yourself whatever, ok, now you can BULLSHIT me right now and say I don't know what you're talking about, and that's fine, Ok, but here is the thing, Ok, I told you early and you didn't listen, Ok, I told you, you wanted to make a case of certain people, you went and you got O.R. (Lawyer) to come and assist you, and mistold you, that maybe wasn't the right guy to go with, now you guys don't really talk, the whole SHIT went to CRAP, and ultimately you ended up getting fired, Ok"
1:00	Defendant	"Ok"
1:01	Fed. Agent	"now you think because maybe you left on bad terms and you maybe didn't get your bonus you're going to FUCK them some way. You know you think that that's going to help you, ok, but here is the thing, THEY are a lot SMARTER THAN YOU, Ok"
1:15	Defendant	"Ok"
1:15	Fed. Agent	"they are not friends with people at top level places because a they are dumb, Ok, now I, there is a limit to what we can do, Ok, now if you want to take the full responsibility for all this, you can, ok, ok that's true, and if you think I'm lying, and like I said in about a year or so, you'll know, just like I've proven to you on that day to now, that you were wrong, and I was right, Ok, I told you not to hire that guy, I told you not to go tell P.J. and that other guy about, but the first"
1:49	Defendant	"No you never told me that"
1:50	Fed. Agent	"I did tell you that"
1:51	Defendant	"you never told me that"
1:51	Fed. Agent	"No, no, no, no, listen"
1:53	Defendant	"you NEVER ever told me not to hire P.J. to tell P.J. for anybody, all I said is hey I would cooperate in whatever aspect that the"
2:01	Fed. Agent	"Listen to what I have to say, Ok"

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent (G. J. C.) and Target/Defendant (AP)
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
2:03	Defendant	"Ok"
2:03	Fed. Agent	"I have a great memory, Ok"
2:03	Defendant	"I do too"
2:04	Fed. Agent	"No, No you got great personal skill, ok, I got great memory, I may not be the same personable guy that you are, Ok, Two- mins I do have great memory and that I'm honest, NOT SAYING THAT YOU'RE NOT, Ok,
2:16	Defendant	"Me too, I'm honest and and you know what"
2:18	Fed. Agent	"hold on, Hold on, JUST LISTEN, Ok, this is FREE advise, doesn't cost you anything, Ok, I was there when??? we specifically told you not to tell these guy, I told you not to hire O.R."
2:28	Defendant	"No you never told me that, NEVER EVER, EVER did you tell me that, I'm going to walk away, because I, I'm telling you right now you never told me not to tell the"
2:36	Fed. Agent	"you can walk away. A.P."
2:38	Defendant	"let me tell you, you never said that"
2:39	Fed. Agent	"No, No, No"
2:40	Defendant	"I'm going to go, I'm a big boy, I'm a big boy"
2:42	Fed. Agent	"Hey, you can ????"
2:43	Defendant	"You know, don't play the game with m, because, I, I KNOW YOU NEVER TOLD ME, ^{Not} TO TELL ANYBODY"
2:47	Fed. Agent	"you can WALK now if you want to"
2:49	Defendant	"Oh I know I can"
2:49	Fed. Agent	"Ok, here is the thing, I know what I told you, Ok"
2:52	Defendant	"I know what, I you said"
2:53	Fed. Agent	"and I told you, not to to hire O.R. (lawyer), because I didn't think he would, he could handle this stress, was I right, I was right on both occasions, Ok, am I right about what is going on, of course I am, Ok, now here is what I was going to say, you can continue to think you understand what is going on, Ok, at the very end you'd be the guy who does the long time ^{shit} ."
3:18	Defendant	"let me tell you the way I see these things, let me tell you the way I see"
3:21	Fed. Agent	"from my point, don't go my point, tell me how you see it because don't go this way"
3:25	Defendant	"No, no let me tell you how I see it, this this is the way I see it, I see it like this, I see it like this, right now, somebody wants me to make up SHIT up, make SHIT up, Ok"
3:37	Fed. Agent	"talking about me"
3:38	Defendant	"Not you, No, no, no, not you, not you, not you, not you, somebody wants me to make up ALL KINDS OF

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent (J.G.) and Target/Defendant (A.P.)
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
		STORIES"
3:43	Fed. Agent	"Ok"
3:43	Defendant	"and this and that"
3:45	Fed. Agent	"regarding"
3:46	Defendant	"regarding anything, I don't, I DON'T KNOW WHAT IT IS, and the one thing I always said, and the only words that I ever came out of my mouth, I'm going to tell you right now, THE ONLY WORDS that came out of my mouth were I'M WILLING TO ASSIST IN ANY WAY POSSIBLE "
4:00	Fed. Agent	"see that's an attorney"
4:01	Defendant	"I just, I just.., no let me finish"
4:03	Fed. Agent	"Ok"
4:03	Defendant	"I just, no this is before I had an attorney"
4:05	Fed. Agent	"No, no, no"
4:06	Defendant	"all I want to do is have my attorney present"
4:08	Fed. Agent	"you can have your"
4:08	Defendant	"I just want to assist in any way "
4:10	Fed. Agent	"Listen to me listen to me, Ok"
4:12	Defendant	"Ok, and I was willing to help in any manner way shape or form"
4:15	Fed. Agent	". A.P. . Ok, you guys didn't contact us, we went to go see O.R. several times BRO, did he tell you"
4:21-4:26		<u>Wind Mumbling the discussion</u>
4:26	Fed. Agent	"I told you"
4:27	Defendant	"look if I did something wrong, I'll do the time, BUT LET ME TELL YOU SOMETHING I DON'T KNOW I DID ANYTHING WRONG, I DON'T KNOW"
4:31	Fed. Agent	"No, No, No, but here is, Ok, Hold on Hold on, Ok you're my friend, Ok, you are a smart guy, ok, listen, listen <u>MUMBLING WIND FOR 2 Seconds, I shouldn't be here, I should have left FUCK 10 minutes ago, Ok, you want to waste</u>
4:48	Defendant	"Say it then say I"
4:49 - 4:51		<u>Wind Mumbling the discussion</u>
4:51	Fed. Agent	No! No!, I don't have to
4:56	Defendant	I don't not disagree
4:57	Fed. Agent	Ok

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent (J.C.) and Target/Defendant (AP)
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
4:57	Defendant	I want to help you in whatever I can
4:58	Fed. Agent	Ok, Here is what, Ok, Here is what I need though ok?
4:59	Defendant	Ok, I'll do it, I'll do it!
5:01	Fed. Agent	No, No, No
5:02	Defendant	Just tell me what I need to do.
5:03	Fed. Agent	Here is the thing ok!
5:04	Defendant	ok
5:04	Fed. Agent	Here is what you need to understand, OK! I need you to understand Bro,
5:07	Defendant	ok
5:08	Fed. Agent	if you want to do the whole time. You tell me!
5:12	Defendant	Ok, What is time? What is time
5:13	Fed. Agent	Have you been reading the paper
5:14	Defendant	No, I know, I know, you know what I stopped reading the paper, I stopped
5:16	Fed. Agent	You should, You should read, it ok
5:19	Defendant	Wait wait wait, The good thing about me is, I care about my family care about my work and that's it
5:24	Fed. Agent	ok
5:24	Defendant	But let me tell you I don't know what you mean, let me tell you right now the way I look at it
5:28	Fed. Agent	ugh
5:29	Defendant	One thing I care about, my family and my work
5:34	Fed. Agent	Ok, FUCK your work, because your work is over, OK, and I am going to tell you that now! Ok, so don't let anyone fool you.
5:41	Defendant	Ok my, my work is over
5:42	Fed. Agent	your work is over, your career is done
5:44	Defendant	My career is done
5:45	Fed. Agent	Ok, what you do have is you do have your family, ok here is the thing, you won't get a walk though, A.P.
5:53	Defendant	I won't get a what
5:54	Fed. Agent	You won't get a walk!
5:54	Defendant	What is that?
5:55	Fed. Agent	A walk mean is that..

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent (J. C. 3) and Target/Defendant (AP 1)
 October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
5:56	Defendant	<i>What is a walk</i>
5:57	Fed. Agent	<i>A walk means that, that you are not going to end up not being charged, ok, that's what a walk means that you become a government witness, and the likelihood of that</i>
6:11	Defendant	<i>But that means I know something, and I don't know shit</i>
6:14	Fed. Agent	<i>Ok, you know how, you know what is interesting, ok, you know what is interesting, ok is</i>
6:27	Fed. Agent	<i>Right now, depending on how much you have talked to various people, they normally tell you, they are just always fishing, ok, alright</i>
6:36	Defendant	<i>What does that mean</i>
6:37	Fed. Agent	<i>Fishing means that, we always give the impression that we know than we do, Ok, I think you need to understand a little bit about me, Ok, of what people tell you, Ok, I'm not fishing, Ok, No, No, Ok, there is a difference between what I can prove, I got you on tape paying money Bro, Ok</i>
6:58	Defendant	<i>Paying money for what</i>
6:59	Fed. Agent	<i>Hey, Hey, that's not my problem, Ok, Ok But No, No, No, here is the thing, when I whip out the money, as evidence, Ok, In court, Ok, I'm going to win, Ok</i>
7:13	Defendant	<i>Alright?</i>
7:14	Fed. Agent	<i>And you think because <u>F. F</u> and her</i>
7:17	Defendant	<i>Who is <u>F. F.</u></i>
7:18	Fed. Agent	<i>Listen, Listen to me, hold on, you think just <u>F. F.</u> and her Uncle is your, is your, is your, Godfather is going to save your ass, it is not</i>
7:24	Defendant	<i>My Godfather? No one is my godfather</i>
7:26	Fed. Agent	<i>No don't worry, hay,</i>
7:27	Defendant	<i>Can I smoke a</i>
7:28	Fed. Agent	<i>You can smoke your cigarette I think you need it</i>
7:29	Defendant	<i>I'm going to smoke a cigarette need one right now because you are making me real nervous</i>
7:31	Fed. Agent	<i>Well I know</i>
7:32	Defendant	<i>Because I don't know what the fuck is going on</i>
7:34	Fed. Agent	<i>No, no, no I'm making you nervous because I am saying a lot of shit that may be true, but here is</i>
7:37	Defendant	<i>maybe</i>
7:38	Fed. Agent	<i>Ok, Ok, Here, go this way, because I don't want your wife to hear me, Ok</i>
7:41	Defendant	<i>Come over here</i>

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent J.C. and Target/Defendant A.P.
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
7:51	Fed. Agent	Wind Ok
7:51	Defendant	She can't hear anything over here
7:52	Fed. Agent	Aw that doesn't matter, let me finish what I was saying
		Wind and Mumbling
8:00	Defendant	Ok what Bothers you?
8:01	Fed. Agent	A discreet way of telling me that I am lying>>>>Wind Mumbling
8:05	Defendant	I'm not saying your lying
8:06	Fed. Agent	And I, I a, I just, I got it, I'll call my buddy that is with me, we warned you bud, don't talk to P.J. ^{straight}
8:12	Defendant	You Never said that
8:14	Fed. Agent	We said that
8:15	Defendant	No
8:15	Fed. Agent	You might have not heard it
8:16	Defendant	You never, You Never, said not to talk to P.J.
8:16	Fed. Agent	No, No, No, NO
8:18	Fed. Agent	Ok listen to me
8:20	Defendant	That would have been obstruction of justice
8:22	Fed. Agent	Do I sound like a stupid guy? Just tell me that, do, do I sound like a dumb guy?
8:27	Defendant	Right now you do because you told me that
8:30	Fed. Agent	Ok, because I told you that or because I didn't tell you that? Which one, Get it right
8:33	Defendant	No because, because you told me that right now and you didn't tell me that earlier
8:35	Fed. Agent	I did tell you, Ok
8:36	Defendant	You never said
8:37	Fed. Agent	No, no, no, here is the thing, you don't recruit someone to cooperate and >>Buzzing Ring>>> if you are not going to tell them how to behave>>>Buzzing>>> that is FUCKING retarded, Ok So here is the thing, lets eliminate what I didn't tell you because I know what I did>>>mumbling>>>> Ok, Now, if you had followed my advice things may be >>>>Mumbling >>>>> but I can't >>>Mumbling >>>>
8:58	Defendant	Nobody can
9:00	Fed. Agent	Alright, so here is what we are going to do, I am going to let you figure out what you want to do, Ok, You are going to go talk to >>> Mumbling >>>> whoever he is, Ok, and you go and decide >>>Mumbling>>>> and in 6 months you are going to tell me >>>Mumbling>>>>

*** R E D A C T E D ***

Intercepted Interrogation between FBI Agent (J.C.) and Target/Defendant (A.P.)
October 26, 2008 6:21pm to 6:31pm (MT)

Minutes / Seconds into Interaction	Person Speaking	Dialog (word for word) to and from Agent and Defendant, Unless noted differently
9:17	Defendant	O.R. is a good guy, O.R. is a good guy!
9:19	Fed. Agent	If he is such a good guy then why don't you talk to him anymore?
9:22	Defendant	>>>Mumbling>>>> I don't have your >>>>Mumbling>>>>
9:29	Defendant's Spouse	Can I use your phone real quick? My phone died I need to call somebody.>>>Mumbling >>>>
9:36	Defendant	Ugh, Ok
9:40		Interception by Target/DefendantTerminated

Accuracy of transcript may only be 97% to 99.99% accurate

"Sec. 7 ->"

Refers to the FBI's 'Legal Handbook for Special Agents', Section 7 - Interrogations
The Handbook may be found in the FBI Website under FOIA Publications.

"FBI"

Refers to the Department of Justice Federal Bureau of Investigation (El Paso Division)

"OIG"

Refers to the Department of Justice Office of the Inspector General (El Paso Division)

*** R E D A C T E D ***

FOIA OF INFORMATION AND PRIVACY ACT REQUEST

Requesting All Information From:

Office of the Inspector General
FOIA/PA Specialist
Suite 4726
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Office of Information and Privacy
Deputy Director
Suite 11050
1425 New York Ave., N.W.
Washington, DC 20530-0001

FBI - Record/Information Dissemination Sec
935 Pennsylvania Ave., N.W.
Washington, DC 20535

US Department of Justice
Executive Office for US Attorneys
FOIA
600 E. Street, N.W. ; Suite 7300
Bicentennial Building
Washington, DC 20530-0001

Direct Response to:

Adrian E. Pena
#48597-280
F.P.C.
P.O. Box 5000
Florence, CO 81226-5000
** TO BE OPENED IN FRONT OF INMATE **

Identification Of Requester:

Adrian Edwardo Pena
Social Sec # 453-99-0868
D.O.B. 09-22-1973

5th Circuit Court of Appeals Case #'s
11-50482
11-50484

Re: Freedom of Information Act (U.S.C. 552)
Privacy Act (5 U.S.C. 552a (d)(1)) Request:
Exemptions (5 U.S.C. 552 (6)(c)(B)(7),
General (U.S.C. 552a(k)(2)) NOT Applicable
to this Request

Dear Sir/Ms:

This letter will serve as my request pursuant to the provisions of the Freedom of Information Act and the Privacy Act, as referenced above. The records sought but not limited to, is the compiled file containing: **The Attached Recording Transcription By at the Time, Target, Adrian E. Pena, of October 26, 2008.** The Recording was conducted by Pena while being approached by **FBI Agent (El Paso) Julio Cordero**, and **DOJ Investigator Eric Ben**, also out of El Paso. Attached (Exhibit 1) is Pena's transcription of the recorded intercepted dialog between the United States Government and Pena.

Specail Agent in El Paso **Kathleen Barrio** of the FBI, **AUSA William F. Lewis, Jr & AUSA Debra Kanof** made Pena aware that the recording was on Subject with their SAN

ANTONIO Office. The FBI Special Agent Barrio made it appear to Pena that San Antonio was the supervising department of the Department of Justice and or also the FBI. She made it clear that if, I, Adrian E. Pena, Could discredit the recording it would be extreemly beneficaill to me. It is unknown as to why the **El Paso Department of Justice and the El Paso FBI** are attempting to **HIDE this Recording** and or discredit this recording, Attahced as an EXHIBIT.

Specail Agent Barrio was kind enough to provide/elaborate to me, Pena, that, another Target, seperate from myself took this recording to San Antonio and recieved some kind of Relief from the Department up there. It was clearly communicated to me, by Ms. Barrio, while she was walking me to the restrooms, that "Discrediting" this recording by me would assist the Government greatly. Further, she explained that "El Paso" has had to do a lot of explaining to address this recoring, but hopefully it will soon be "water under the bridge", because they have been collectivly tackel- ing the consern fom San Antonio. Ms. Barrio DID NOT SAY THIS, but implied that they the El Paso FBI and DOJ have successfully covered up the recording.

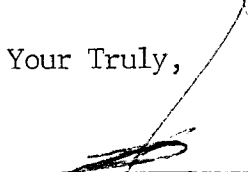
THE INFORMATION THAT REQUESTER IS SEEKING:

- 1) any and all information assocaited with this recording (See Exhibit Attached)
- 2) any and all investigations related to the recording attached, their outcome of the investigation if their were any
- 3) any and all investigation and/or investigatory reports related to the recording
- 4) reports or evidentiary and/or scientific information findings related to the recording
- 5) any and all correspondence related to the recording
- 6) any final and closing investigation reports
- 7) any and/or all information, data, or reports not otherwise exempt by statue (5 U.S.C. (66)(c)(b)(7)), (5 U.S.C. 52a (j)(2), (k)(2), or law, Tarlton, v. Saxbe,

507, F.2d. 1116, 165 U.S. App.D.C. 293 (1974), Menard v. Saxbe, 498 F2d. 1017, 162 U.S. App.D.C. 284 (1974), Sullivan v. Murphy, 478 F.2d U.S. App. D.C. 28(1973). Your Agency is advised that the investigation reports in toto are no longer accorded exempt status unless under the specific exemption noted, and only with reference to specific citation of authority, Paton v. LaPrade, 524 F.2d 862, 868-69. (CA3 1975)

Pursuant to Title 5 U.S.C. 552 (6)(1)(1), it is noted your Agency has ten(10) working days following receipt of this request to provide the information and material sought.

Your Truly,



Adrian E. Pena
4859-7280
F.P.C. - Summit
P.O. Box 5000
Florence, CO 81226

I CERTIFY under penalty of perjury under the laws of the United States of America, that I have the foregoing request for information and know the contents thereof, and that the information above is true, correct and complete.

EXECUTED THIS 2nd DAY OF October, 2011

Requester:



Adrian E. Pena

Requester is requesting that all returned information be returned certified.

Enclosure: Exhibit 1 - Transcript of Recording. This transcript was transcribed by Requester. Accuracy may only be 99.999% accurate.

Sent Via 1st Class U.S. Mail



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

November 29, 2011

Adrian E. Pena
#48597-280
F.P.C. - Summit
P.O. Box 5000
Florence, CO 81226-5000

Dear Mr. Pena:

We are in receipt of your letter dated October 3, 2011, which you directed the Federal Bureau of Investigation (FBI). Your letter was forwarded to the Initial Processing Unit (IPU), Internal Investigations Section (IIS), Inspection Division (INSD), for review. The IIS is the FBI entity that conducts internal investigations regarding allegations of criminality and/or serious misconduct against FBI employees.

You alleged that you recorded agents from the El Paso FBI Office and El Paso DOJ interrogating you while you were with your family at a pizza palor. You claimed that you were pressured in an attempt to discredit the recording because you did not admit to any wrongdoing on it. You further stated that the FBI and DOJ are trying to cover up the tape.

IPU has reviewed the circumstances surrounding your complaint and determined that no specific evidence of FBI misconduct was identified. Therefore, no further action is warranted regarding this issue. In addition, we concluded that your concerns should be addressed through appropriate judicial channels. We consider this matter closed.

Sincerely,

A handwritten signature in cursive script, reading "Sandra A. Bungo", is written over the typed name.

Sandra A. Bungo
Unit Chief
Initial Processing Unit

EXHIBIT 1

Appeal No.: AP-2012-01977



Federal Bureau of Investigation

Washington, D.C. 20535

February 14, 2012

MR. ADRIAN E. PENA
**4859-7280
FLORENCE FEDERAL PRISON CAMP - SUMMIT
POST OFFICE BOX 5000
FLORENCE, CO 81226

FOIPA Request No.: 1175501- 000
Subject: PENA, ADRIAN E.

Dear Mr. Pena:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A), (b)(7)(F).

5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

5 U.S.C. § 552(b)(7)(F) exempts from disclosure:

could reasonably be expected to endanger the life or physical safety of any individual...

In applying these exemptions, I have determined that the records responsive to your request are law enforcement records; that there is a pending or prospective law enforcement proceeding relevant to these responsive records; and that release of the information contained in these responsive records could reasonably be expected to endanger the life or physical safety of any individual, or interfere with the enforcement proceedings. For a further explanation of this exemption, see enclosed Explanation of Exemptions Form.

Pending?

? what

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Very truly yours,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure

~~EXHIBIT 4~~
Appeal No.: AP-2012-01977
Complaint - Exhibit 4 (Page 1)

May 01, 2012

Office of Information Policy
Dep. of Justice

Attn: Priscilla Jones - Supervisory Admin. Specailist
Suite 11050
1425 New York Ave., N.W.
Washington, DC 20530-0001

Re: Appeal No.: AP-2012-01977
Adrian E. Pena

Dear Ms. Jones,

Please accept this letter, with its attachments/exhibits and written request within, as my supporting documentation to my above referenced appeal. Attached and within, you will find two (2) contradictory responses from the Federal Bureau of Investigation's (FBI) departments and other supporting information to consider in my appeal.

- 1) On November 29, 2011 the FBI's Initial Processing Unit (FBI-IPU), the Internal Investigations Section (FBI-IIS), and the Inspection Division (FBI-INS), all three (3) divisions of the FBI, allege they conducted a thorough review of my complaint, which happens to be the identical request behind my Appeal No.: AP-2012-01977. The initiation of my appeal stems from the request of a recording I obtained, where I **recorded** both an FBI agent and a OIG agent unexpectedly interrogating me, while I at the same time was surprisingly recording them and their actions. I requested the FBI to conduct an investigation and further, provide any and all information derived from my recording through this FOIA/PA. The FBI's three (3) divisions, all collectively, allege 'no specific evidence of FBI misconduct was identified. Therefore, no further action is warrented regarding this issue' and determined the 'matter closed'. [Exhibit 1]
- 2) On February 14, 2012 the FBI, Section Chief Record/Information Dissemination Section, a Mr. David M. Hardy, located material stemming from my FOIA/PA request "the recording", in 'an investigative file' and deemed the material to be 'exempt from disclosure'. In this letter from the FBI, Mr Hardy found the identical material, three (3) other divisions of the FBI found to be: no specific evidence; no further action warranted; did not identify any misconduct; and considered the matter closed, to now, all of the sudden, be exempt from disclosure. The reasons Mr. Hardy provides for exemption raise doubt and appear to be in conflict with the letter the FBI (his own agency) sent in November 29, 2011, where it clarifies there is no on-going investigation, nothing was identified, and the matter 'closed'. In sum, it appears either three (3) FBI Divisions, or Mr. Hardy's Division is misrepresenting the issues behind my claims or request in their letters. If the November 29, 2011 FBI letter has any merit, validity, or substance to it there should be no reason to exempt any of my request under my current appeal No.: AP-2012-01977. [Exhibit 2]
- 3) I am claiming in this appeal that Mr. Hardy's Division of the FBI has improperly asserted FOIA/PA exemptions in order to withhold responsive records. Below are more detailed supporting reasons for consideration in my appeal:
 - A) There is no current litigation or on-going trials of any sort with my FOIA/PA that I am aware of or that has been disclosed.

May 01, 2012 Ltr.
Appeal No.: AP-2012-01977
Page 2

- B) Since the initiation of this action the FBI has not released **any** documents or information from their file/s.
- C) The FBI has failed to provide any **specific** potential harm that the release of this information may cause to any alleged investigation or file. **I request to be provided 'specific' potential harm the release may cause.**
- D) The FBI has failed to provide 'narrowly construde' specifics for applying exceptions. Please keep in mind 'the burden is on the agency to justify its action' in applying the exception. citing 5 U.S.C. § (a)(4)(B) **I request the FBI to provide narrow specifics for its reason to apply the exception/s.**
- E) The FBI has failed to attempt to provide me with **redacted** information on the documents sought. The FBI has the option to provide information requested in redacted format. The FBI when exercising redaction must bare justifying the redaction by notations, ~~it~~ it elects to comply with redaction.
- F) The FBI should prevent 'excessive redactions' when they are rightfully provided, in redacted format, and **avoid** redaction of full paragraphs.
- G) The FBI has failed to inform me of how many documents are contained in the 'investigative file', and or what the file consist of. **I request this information to be provided.**
- H) The FBI has failed to provide: narrative descriptions of each page of every document and or evidence with the FBI's justification for withholding each particular category of information under the statutory exemption. **I request this be done in the event it is applicable.**
- I) The FBI has failed to provide to me any segregable portions of the requested documents/information. **I request this be made.** In citing 5 U.S.C.A. § 552(b) ~~it~~ states if an exemption is claimed only to part of the requested record, the agency is obligated to produce any reasonably segregable portion of the document.
- J) The FBI has failed to provide a resonably detailed affidavit, setting forth the search terms and the type of search performed, and avering that all files likely to contain responsive materials...were searched. **I request this be made.**

I appreciate the opportunity to have provided this letter in support of my appeal and look forward to hearing from you soon. Acknowledgement of this letter **is requested.**

Very Truly Yours,

Enclosures:

April 24, 2012 Ltr
Nov. 29, 2011 Ltr
Feb. 14, 2012 Ltr


Adrian E. Pena #48597-280

Certificate of Service

I certify that a true and correct copy of the May 01, 2012 Letter to the Department of Justice Office of Information Policy, on Appeal No.: AP-2012-01977, together with all attachments, exhibits, and supporting papers, were delivered to :

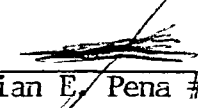
FBI - Record/Information Dissemination Section
Attn: David M. Hardy
935 Pennsylvania Ave., NW
Washington, D.C. 20535

and

FBI - Initial Processing Unit
Attn: Sandra A. Bungo - Unit Chief
935 Pennsylvania Ave., NW
Washington, DC 20535-0001

The information was sent via first class mail on May 2nd, 2012 to all parties.

This Certificate was executed on May 2nd, 2012 at Florence, CO.



Adrian E. Pena # 48597-280

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Florence, CO 81226-5000